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Market Rule Amendments: Chapter 3

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Meeting at a Glance

Engagement: Market Rule Amendments: Chapter 3

Today's purpose: Discuss feedback received from participants about the amendments and the IESO's responses to the comments

Key points: Addressing feedback related to the dispute resolution process, the confidentiality rules and updates to the lower penalty table

Feedback areas: All input is welcome

Discussion: There will be time for participants to raise questions throughout this session

Welcome and Introduction

- This engagement is conducted according to the [IESO Engagement Principles](#)
- Today's session will be recorded and available for viewing online.
- All documents associated with this engagement can be found on the IESO's 'Market Rule Amendments: Chapter 3' engagement webpage: <https://www.ieso.ca/en/Sector-Participants/Engagement-Initiatives/Engagements/Market-Rule-Amendments-Chapter-3>

Participation

- For questions and comments click on the “Raise hand” icon (hand symbol) at the top of the application window. This will indicate to the host you would like to speak.
- To unmute audio, click on the microphone icon at the top of the application window.
- Audio should be muted when not asking a question.
- Connection issues contact engagement@ieso.ca or Microsoft Office Support.

Today's Discussion

The key objectives of the session are to:

- Provide a brief overview of the amendments;
- Provide an overview of the main comments received in December 2023 and the IESO responses;
- Invite further feedback from participants during the webinar and through written feedback on the feedback form.

Agenda

1. Overview of the engagement
2. Comments received in December 2023
3. Review of our responses to the comments
4. Key activities
5. Questions

Engagement Overview

Information and education on Market Rules amendments proposed by the Market Assessment and Compliance Division (MACD) of the IESO, to modernize and clarify rules related to its enforcement processes, including confidentiality and disputes.

These amendments aim to support one of the IESO's strategic objectives, ensuring cost-effective reliability by way of effective rule enforcement. There are related amendments to Market Manual 2.6.

We provide this opportunity for participants to raise questions and provide feedback on our responses to the comments received.

Background

Many of the rules related to enforcement have been in place since market opening. In the more than two decades since then the IESO, in particular through its Market Assessment and Compliance Division (MACD), has gained substantial experience with the enforcement of the Market Rules.

As a modern regulator, with the passage of time has come a need to update the Market Rules – modernizing them and adding some specificity and timing to drive efficiency and effectiveness.

These amendments support MACD's core mandate to effectively enforce the Market Rules on behalf of stakeholders and customers.

Objectives of these Amendments

Our objectives are to:

- improve the timelines within which we carry out disputes;
- make our processes more transparent by including more specificity in the Market Rules; and
- increase the deterrence effect of our actions.

The anticipated result is overall improvement to our regulatory and dispute processes, with greater clarity and an overall benefit to the market as a whole.

Amendments to Chapter 3 of the Market Rules

The more significant amendments are reviewed below in the order they appear in the Market Rules. There are also minor updates in both the Market Rules and the Market Manual that are not covered here, in the nature of housekeeping amendments (all of which can be found on the engagement page).

1. Market Participants have 20 business days to dispute a Chapter 3 enforcement determination and/or order.
2. In the dispute resolution process, where good faith negotiations have failed, either party may terminate upon notice to the other party.

Amendments to Chapter 3 of the Market Rules

3. An exception to the general requirement to keep *Confidential Information* confidential has been added for enforcement purposes.
4. Additional clarity has been added around the MACD's broad right to gather information in its enforcement actions.
5. The penalty table in s. 6.6.6. has been updated to go from a maximum of \$10,000 to a maximum of \$100,000.
6. The one instance in which the IESO's Board of Directors was involved in determining the applicable penalty table has been changed to remove that specific role (overall Board oversight has increased).

Chapter 3 Amendments – Comments and Response

1. Dispute Resolution – 20 days to file a dispute

Comment: One participant feels that the 20 business day period to dispute a determination is too short.

Our response: A 20-business day period aligns the dispute process with other disputes of IESO decisions under the Market Rules. It is also in line with other common appeal processes in Ontario.

Chapter 3 Amendments – Comments and Response

2. Dispute Resolution – termination of good faith negotiations

Comment: There was a request to recognize the 30 day period in Chapter 3, section 2.5.3A.

Our response: The 30-day minimum period for good faith negotiations remains effective, per that section.

Chapter 3 Amendments – Comments and Response

3. Accessibility and Confidentiality of Information – exception for enforcement purposes

Comment: Questions were received about the scope of the exemption as well as suggestions with respect to possible safeguards to put in place when exercising this exception.

Our response: The proposed change to allow an exemption to confidentiality for enforcement purposes is not unlimited:

- The language chosen often appears in other laws with the exception applying for “administrative and enforcement” purposes. We drafted this narrowly to limit it to enforcement purposes.

Chapter 3 Amendments – Comments and Response

- This limit to enforcement purposes is understood in the context of the Market Rules. The IESO cannot share Confidential Information under this exception unless it is exercising an enforcement authority under the Market Rules.

We appreciated the feedback on proposed safeguards. We will provide safeguards. These will be documented in a future Compliance and Enforcement guidance document (CEG). It will contain the following:

- We will apply the principle of limited disclosure.

Chapter 3 Amendments – Comments and Response

- When disclosing to another Market Participant, the Confidential Information obligations in the Market Rules will apply.
- When disclosing to a non-Market Participant, we will enter into a confidentiality agreement that is similar in approach to Chapter 3, sections 5.3.10.1 to 5.3.10.3.

We will not provide prior notice of the disclosure of Confidential Information to the Market Participant who is the subject of the enforcement action. This could introduce unreasonable delay and compromise the integrity of the investigative process.

Chapter 3 Amendments – Comments and Response

4. Information to support enforcement action

Comment: A question was received around interviews and whether this change would include third party interviews.

Our response: This provision speaks to the way in which MACD may request further information of a Market Participant. This is part of existing practices. The rationale for the rule change is to provide clarity. This provision does not apply to third parties, but MACD can speak with third parties in the course of investigating Market Rule breaches.

Chapter 3 Amendments – Comments and Response

5. Enforcement - Increases to the Lower Penalty Table

Comment: The increases seem too high. Please explain how the IESO arrived at the proposed changes to the lower penalty table (i.e. benchmarking of other jurisdictions and regulators).

Our response: Since 2000, the electricity sector in Ontario has undergone significant changes. Absent extraordinary circumstances, when the higher penalty table is appropriate, Ontario's lower penalty table is significantly lower than all of the comparator jurisdictions reviewed, including NERC and its regional entities, FERC, Alberta, BC, Quebec, and Australia. (See Appendix A in our responses for details.)

Chapter 3 Amendments – Comments and Response

Comment: It seems like deterrence is driving these changes. How will MACD consider extenuating circumstances which prevent or delay the implementation of corrective actions; will these sanctions be an effective deterrent where a Market Participant is demonstrating and exercising due diligence to avoid or correct a potential breach?

Our response: Deterrence is a factor driving the proposed changes. Even assuming the maximum penalty is ordered for a given breach, it is not likely to be material for most, if not all, Market Participants. This is separate from the exercise of due diligence and consideration of surrounding circumstances, both which will continue to be considered before issuing a penalty.

Chapter 3 Amendments – Comments and Response

Comment: What variables will be used to assess the penalty amounts in the lower penalty table?

Our response: For those non-formula-based penalties, in determining the amount of a penalty, MACD will have regard to the factors set out in Chapter 3, section 6.6.7. This section is not being amended as part of this initiative.

Chapter 3 Amendments – Comments and Response

Comment: When will the proposed amounts be applied to any non-compliance events that are discovered or self-reported?

Our response: These changes will apply to events that take place after the effective date of the proposed Market Rules amendments. They will not apply to existing open self-reports or other non-compliance events that occurred before that date. Before any such effective date, the original amounts in the lower penalty table will apply.

Chapter 3 Amendments – Comments and Response

Comment: How will the proposed penalty amounts work with the IESO's Expedited Resolution Program (ERP) that is being piloted?

Our response: These changes are independent of ERP. In the near future, MACD will be providing more information about ERP on the IESO's website; however, such information will not speak to these proposed Market Rule amendments, if implemented.

Chapter 3 Amendments – Comments and Response

6. Enforcement – Change to Board’s Role

Comment: One participant is seeking continued Board oversight over the one condition to move to the higher penalty table.

Our response: One of the four conditions required to be satisfied before the application of the higher penalty table currently involves a decision of the IESO Board. This specific decision point will change to MACD. Board oversight remains and is broader: MACD now reports directly to the Board through the Markets Committee. This is reflected in changes to Market Manual 2.6, section 1.3.1.

Chapter 3 Amendments – Comments and Response

General Questions: Timing of Initiative

Comment: Request for a delay in these Market Rule amendments until a second generator representative on the Technical Panel has been selected and on-boarded.

Our response: Any concerns with the composition of the Technical Panel (TP) are best addressed through that forum.

Chapter 3 Amendments – Comments and Response

General Questions: Comment on Impact

Comment: The impact of the proposed changes could discourage Market Participants from resolving issues and incidents within the IESO's dispute resolution process, and instead choose to elevate to the courts.

Our response: MACD has and will continue to involve Market Participants in its investigative process. From time to time, there may be Market Participants that dispute the outcomes of compliance investigations. As a modern, effective regulator, we need to ensure we continue to evolve to support reliability and market efficiency.

Market Manual 2.6 - Comments and Response

Market Manual 2.6, s. 1.3 – removal of “ring-fencing”

Comment: There was a concern this would change practices and allow for the free flow of investigative files and information between the IESO and MACD; effectively merge the two entities and eliminate the ability of MACD to operate independently of the IESO.

Our response: The IESO is not changing its structure (including the segregation of its files) nor allowing for the “free flow” of information from MACD to the broader IESO. MACD is a division within the IESO. The change was made because the term “ring-fenced” is ambiguous in this context, and to capture the independence and governance changes.

Changes Outside of the Proposed Amendments

8. Market Manual 2.6 - 1.3.10 Public Reporting

The removal of a provision in Market Manual 2.6 that provided that in the event of the filing of a dispute of the MACD breach finding within 10 business days of that finding, MACD would not publish information relating to the breach until after the conclusion of the dispute resolution process.

Comment: There was a request for a reconsideration of that change as well as some related procedural questions.

Changes Outside of the Proposed Amendments

Our response:

This change has become effective and supports transparency into MACD determinations and enables the market to respond to determinations.

The process followed was the usual manual Baseline process (not the expedited process). The provision was not linked to an amendment of a Market Rule; it was a standalone provision. The amendment did not fall within the criteria of the November 2018 Governance and Rule Making Report and Recommendations, as it was not made in support of a Market Rule amendment. The process included a ten-day period for public consultation, wherein comments were received and responses provided.

Changes Outside of the Proposed Amendments

Comment: Does the IESO publish the name of the market participant or is the publication of the market participant's name subject to the completion of the dispute resolution process? When is it published?

Our response: Following a determination, publishing is at MACD's discretion. Publishing could be prior to the completion of the dispute resolution process. The arbitration process is generally a public process. Chapter 3, section 2.9.2.1 of the Market Rules, states that once the arbitrator is appointed, the summaries for publication are published by the IESO (see sections 2.5.3C, 2.5.6, 2.5.6C). This is also set out on page 4 of the Notice of Dispute Form (available on the IESO's website).

Discussion and Request for Feedback

- We invite you to raise any specific questions you have about any of the proposed amendments to the Market Rules.

The IESO will consider all input on this engagement and a feedback form is posted on the **Market Rule Amendments: Chapter 3** engagement webpage <https://www.ieso.ca/en/Sector-Participants/Engagement-Initiatives/Engagements/Market-Rule-Amendments-Chapter-3>

- Feedback is due by **February 20, 2024**.
- Please contact engagement@ieso.ca if you have questions following this session.

Key Activities

Timing

Engagement Activity

February 20

Written Comments Close

March 5

TP Education Session including November and February Engagement Days comments received and our responses to those comments
